

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

THOMAS LEE CALLAHAN,)
)
 Petitioner,)
)
 v.) 1:14CV271
)
LEWIS SMITH, et al.,)
)
 Respondent.)

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a prisoner of the State of North Carolina, submitted a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody, together with the \$5.00 filing fee. For the following reasons, the Petition cannot be further processed.

1. The Petition was not signed by Petitioner. At least one copy must bear an original signature. Rule 2(c), Rules Governing § 2254 Cases.
2. Petitioner already filed one habeas petition as to the same convictions, which is still pending in this Court at this time. See Callahan v. Smith, 1:14CV5 (M.D.N.C.). Petitioner may not file a second petition as to these convictions. If he wishes to add any claims to his pending Petition, he must file a motion to amend his pending Petition and receive permission to do so from the Court.

Because of these pleading failures, the Petition should be filed and then dismissed, without prejudice to Petitioner pursuing his pending Petition in 1:14CV5. The Clerk is instructed to return Petitioner's \$5.00 filing fee.

IT IS THEREFORE ORDERED that the Clerk is instructed to return Petitioner's \$5.00 filing fee.

IT IS RECOMMENDED that this action be filed, but then dismissed *sua sponte* without prejudice to Petitioner pursuing his Petition in case 1:14CV5.

This, the 6th day of June, 2014.

/s/ Joi Elizabeth Peake
United States Magistrate Judge